



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201313033**

Release Date: 3/29/2013

Date: 1/7/2013

UIL Code: 501.03-00

501.32-00

501.03-01

501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: December 20, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Founder/Owner/Director
C = Founder/Owner/Director
M = Area of Operation
O = Name of League
Q = State
R = Date
T = Date
U = Date

UIL:

501.03-00
501.32-00
501.30.01
501.33-00

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Internal Revenue Code. The basis for our conclusion is set forth below.

ISSUES:

- 1) Do you fail the organizational test? Yes, for the reasons explained below.
- 2) Do your earnings inure to the benefit of insiders? Yes, for the reasons explained below.

Letter 4036(CG) (11-2005)
Catalog Number 47630W

- 3) Do your activities result in more than insubstantial private benefit? Yes, for the reasons explained below.

FACTS:

B & C, husband and wife owned and operated a for-profit amateur minor league football team. Less than 4 years later after starting the team they "voluntarily dissolved the for-profit in order to apply for a not for profit referencing the same ownership in order to keep the name the same." In addition the same EIN number of the dissolved for-profit continued to be used for the not for profit entity. The program re formed as a not for profit " so that if we(the team) had to pay for items/merchandise/services, etc they would at least be tax deductible....becoming a non-profit will help open a lot of doors for the organization on different levels."

B and C incorporated you in Q on Date R. Your purpose in pertinent part is "to form an amateur minor league football team.... To regulate, standardize and promote the highest possible level of football competition amongst its (your) members in the community." Your dissolution clause states "'upon dissolution the remaining assets will be used exclusively for exempt purposes".

B and C are your only board members and they are described throughout your application as the founders and owners of the team. Information provided along with the application also shows B is a player on your team.

Your primary activity is the operation of a minor league football team. The brochure you provided advertises you as a "professional minor league at its best". You advertise times for interested individuals to try out for the team. The players must be 18 or older or age 17 with a parents or guardians permission and pay a small fee to try out. Players admitted to the team must buy their own equipment as well as pay a fee of about \$350.00. Players receive no compensation. Your football season typically includes practice two days a week and season play consisting of ten games against other minor league teams. You also encourage your players to be involved in community and charitable activities and require a minimum of ten hours commitment from each player to such activities. You have weekly "players' night out" where players get together off the field for interaction.

You offer players another chance at playing football. You film all games and provide copies to players who are looking to advance their careers through recruitment, college or the NFL. A news article quotes one of your coaches describing your players as "some are out here trying to move to a different level, like arena football...some are just out here to play...some are trying to hold on to the past." Other articles and promotional

materials suggest players may receive opportunities to play college or professional football. A flyer states "the sky's the limit" with respect to possible opportunities for career advancement.

Your staff includes a head coach, assistant coaches, offensive and defensive coordinators, video and media coordinators, grounds keeper etc. All staff positions are volunteer and no one is compensated

Your sources of income include gross receipts from admission to your games, sponsorship and advertising. Financial statements provided for the for-profit team indicated it operated initially at a profit. Prior to your formation, the for-profit team realized a loss. Your financial statements continue to show financial losses. Expenses include advertising, league fees, rental of game and practice fields and payments for officials and team transportation (auto) costs.

Your balance sheet reflects a loan from an officer. This amount ranged from around \$ to around \$ by FY ended 20 . No explanation was provided for the varying amounts. You explained that B and C mortgaged their home to finance the team. You submitted documentation from 20 , prior to your formation, indicating a loan amount of over from a bank to B and C.

LAW:

Section 501(c)(3) of the Internal Revenue Code ("Code") provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order for an organization to be exempt under section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organizations assets would be considered dedicated for an exempt purpose, for example, if upon dissolution,

such assets would by reason of a provision in the organization's articles or by operation of law be distributed for one or more exempt purposes, or to the federal government or the state or local government for a public purpose.

Regulations section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one of more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interests in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 64-275, 1964-2 C.B. 142, held an organization formed for the purpose of providing advanced training to suitable candidates in the techniques of racing small sailboats in national and international competition, and thereby improving the caliber of candidates representing the United States in Olympic and Pan American games qualifies for exemption as an educational organization described in IRC 501(c)(3).

Revenue Ruling 65-2, 1965-1 C.B. 227, held, a foundation, which is organized and operated exclusively for the purpose of teaching a particular sport to the children of a community by providing free instruction, free equipment, and facilities for playing the game, qualifies for exemption from federal income tax under section 501(c)(3) of the Code .

Revenue Ruling 76-441, 1976-2 C.B. 147, presents two situations concerning school operations. In the first scenario a nonprofit school succeeded to the assets of a for-profit school. While the former owners were employed in the new school, the board of directors was completely different. The ruling concludes that the transfer did not serve

private interests. Part of that conclusion was based on the independence of the board. In the second scenario, the for-profit school converted to a nonprofit school. The former owners became the new school's directors. The former owners/new directors benefited financially from the conversion. The ruling concludes that private interests were served.

Revenue Ruling 77-365, 1977-2 C.B. 192, held an otherwise qualifying nonprofit organization that conducts clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport is operated exclusively for educational purposes and qualifies for exemption;

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number of or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

American Science Foundation v. Commissioner, T.C. Memo. 1986-556, indicates that an organization must establish through the administrative record that it operates as a section 501(c) (3) organization.

The Church of Eternal Life and Liberty v. Commissioner, 86 T.C. 916 (1986) describes an organization in which the court wrote that private inurement is strongly suggested where an individual or small group of individuals are the principle contributors to an organization and that individual or small group of individuals have exclusive control over the management of the organization's funds.

In Wayne Baseball, Inc. v. C.I.R., T.C. Memo. 1999-304, 1999 WL 717827, it was determined that a highly competitive amateur baseball league did not qualify for exemption under 501(c)(3). Team members were recruited from a series of spring tryouts were comprised of players who each possessed a high degree of baseball skills. The team did not have a formal instructional program. Players relied on informal interaction to seek advice, self-teaching, and hands-on experience during games. No admission was charged to spectators who watched the games. Although spectators were allowed to watch the baseball games for free, the organization's activities did not promote the game of baseball in the surrounding community. Instead, the court found that organization's purpose was to provide a team for the enjoyment, recreation and social interaction of its players.

APPLICATION OF LAW:

Organizational Test

Your Articles of Incorporation do not contain the requisite purpose and dissolution provisions. Your purposes are broader than the purposes specified in section 501(c)(3) and sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(b)(1)(iv) of the regulations.

The dissolution clause does not meet the requirements of Section 1.501(c)(3)-1(b)(4) of the regulations, since it simply indicates the remaining assets will be used exclusively for exempt purposes. This statement does not dedicate assets exclusively for exempt purposes.

Inurement/Private benefit

You are not as described in section 501(c)(3) and you do not meet operational test as described in section 1.501(c)(3)-1(c)(1) of the Regulations. You provide football players of all ages another opportunity to play football. You operate an Adult Minor League Team owned by your directors and comprised of members of the community selected through tryouts to compete in a league against other teams. You operate to provide your players an opportunity to advance their careers through recruitment, college or the NFL.

You are not as described in Section 1.501(c)(3)-1(c)(2) of the code because your net earnings inure to the benefit of B and C. B and C who are your founders and officers are also described as owners of your team. They paid a franchise fee and financed your activities with personal loans obtained by mortgaging of their residence. The amount is shown as your liability on your balance sheet. B & C owned stock and were paid dividends prior to your conversion to a non-profit. Therefore you serve the private interests of B and C and do not meet this requirement of the regulations..

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you are operated for the benefit of your founders, owners and officers, B and C. You also serve the private interests of your players by assisting eligible players get opportunities to play at the college or professional levels.

You are not like the organizations described in Revenue Ruling 65-2 and Revenue Ruling 64-275. You are organized and operated to recruit adult football players to play in a minor league with the hope that they can move on to the professional level.

You are similar to the second organization described in Revenue Ruling 76-441. The

officers of the for-profit continued as officers of the non-profit. The personal loan from the officer continued to be a liability of the non-profit and there was no indication that any of the assets were transferred to the non-profit. There have been no changes in your activities and you continue to operate in the same fashion as when you were a for-profit entity. Furthermore, you have indicated that expenses while operating as a for-profit were cost-prohibitive. At a minimum, you would be able to reduce expenses by not having to pay sales taxes for purchases as a section 501(c)(3) organization.

You are unlike the organization described in Revenue Ruling 77-365. Your purpose is to provide a venue for men in M to engage in the sport of football and potentially enter the collegiate or professional arena. You require potential players to pay registration fees to tryout out for your team. Player fees are required of those who make the team. The players must possess certain skills to play on your team.

Similar to Better Business Bureau of Washington D.C., Inc. v. United States, you operate for the substantial non-exempt purpose of managing and operating a, minor league football team that is owned by your founders/officers.

As in American Science Foundation v. Commissioner, you have failed to establish through the administrative record that you operate as a section 501(c)(3) organization. You have not established that you are educational and that your earnings do not inure to the benefit of B and C your founders/officers.

Like the organization in The Church of Eternal Life and Liberty inurement is strongly suggested because you too have a small group of individuals; namely your founders B and C who have used funds from the mortgage of their home for your operations and have exclusive control over the management of your funds.

You are similar to the organization described in Wayne Baseball, Inc. You recruit players through tryouts. In addition you also charge spectators for attending the games and promote by advertising in the media. Many of your players play for the love of the sport, and community benefit if any is incidental to the main purpose of playing on a team in the minor league.

APPLICANT'S POSITION:

You indicate that % of your time is devoted to playing football. % is spent teaching young men to be better on and off the field and another % is spent participating in "give back" community service.

You formed as a non-profit so that if you had to pay for items/merchandise/services, etc.

they would at least be tax deductible. As a for-profit the program does not and cannot generate enough funds to run properly without having to cut corners. "Becoming a non profit will help open a lot of doors for you on different levels."

SERVICE'S RESPONSE TO APPLICANT'S POSITION:

Although you indicate only % of your time is devoted to football the facts show otherwise. You spend time on the sport for summer conditioning, team tryouts, preseason weekend practices, two preseason games, official season practices held twice weekly, ten official season games, and playoff games over a period of nine to ten months during the year is substantial. Besides playing together on the football field, weekly "Players Night Out" events enable players to bond together off field. Team building is the purpose for the weekly events, which encourages and facilitates positive interaction amongst your team's players and helps create a stronger team.

Your players' community service and outreach activities are incidental compared to the time spent for training for and playing the game. Your players' appearances at various community events accomplish the following: 1) Raise the public's awareness of the events and/or fundraisers, 2) Serve as a public relations campaign for the team, and 3) Increase the team's exposure within the community.

Your reason for applying for non-profit status is to obtain merchandise or services tax free and to enable the opening of a lot of doors at different levels. You will also help alleviate B and C's financial burden of owning the team.

CONCLUSION:

Organizational

Based on the above, we find that you are not organized for exempt purposes within the meaning of section 501(c)(3) of the Code. Specifically, you do not meet the organizational test for exemption because the language in your organizing document does not meet the organizational test requirements under section 501(c)(3) of the code.

Inurement/Private Benefit

You fail the operational test because you are not operated exclusively for section 501(c)(3) purposes. Specifically you are operated to own and manage a minor league team providing opportunities for your players to move on to the professional level and for the private benefit of your founders and officers B and C.

Accordingly we conclude you do not qualify for exemption under section 501(c)(3) of the code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section

7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service

Deliver to:

Internal Revenue Service

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Ruling and Agreements

Enclosure, Publication 892